PP

v.

ABDUL RAHMAN MOHAMAD

COURT OF APPEAL, PUTRAJAYA
RICHARD MALANJUM JCA
TENGKU BAHARUDIN JCA
AZMEL MAAMOR J
[CRIMINAL APPEAL NO: J-09-29-2004]
25 JANUARY 2005

CRIMINAL PROCEDURE: *Appeal - Fact, findings of - Interference by appellate court - Scope and character of appellate functions - Decision of trial judge based on evidence adduced at trial - Whether questions of fact based on credibility and trustworthiness of witnesses - Whether conclusions of trial judge plainly wrong or against weight of evidence - Accused convicted for rape - Whether complainant consented to sexual intercourse within meaning of ss. 375(b) & 90(a) Penal Code - Whether High Court should have disturbed factual findings of trial judge*

CRIMINAL LAW: *Penal Code - Section 375(b) - Rape - Consent - Section 90(a) - Accused convicted for raping complainant whilst administering spiritual medical-treatment to her - Whether complainant consented to repeated acts of sexual intercourse with accused - Whether consent given under fear of injury or misconception or misrepresentation of fact - Importance of complainant's state of mind immediately before intercourse - Whether complainant could have exercised her free will voluntarily and consciously - Whether High Court wrong in disturbing findings of trial judge*

The accused was tried in the Sessions Court for the rape of a 20-year-old girl ('the complainant'). It was the prosecution's case that he had raped the complainant several times over a period of three months on the pretext of employing spiritual medical-treatment to cure the complainant of some persistent ailments. During the period of treatment, the complainant had stayed at the accused's family house, and the therapy sessions themselves were alleged to have been "preceded by a recitation of Quranic verses and incantations in the name of Allah or prayers and were followed by sexual intercourse". The prosecution contended that it had been impressed upon the complainant that such was the will of God, and that if she did not submit to it she would become insane or would meet with death.

At the conclusion of the trial, the accused was found guilty, convicted and sentenced to eight years' imprisonment with eight strokes of whipping. The conviction, however, was overturned by the High Court on appeal – essentially on the ground that the acts of sexual intercourse concerned had taken place with the complainant's consent – and the accused was discharged and acquitted. This was the prosecution's appeal to the Court of Appeal.

Held (allowing the appeal)
Per Tengku Baharudin Shah JCA delivering the judgment of the court:

[1] The issue whether the complainant had consented to having sexual intercourse with the accused was a question of fact which must be decided on the evidence adduced at the trial before the Sessions Court. It was a question of fact based substantially on the credibility of the witnesses called; hence, the appellate court must be slow to disturb the factual findings of the trial judge unless it was convinced that his decision was plainly wrong or was against the weight of the evidence. The functions of an appellate court – in an appeal from the decision of a trial judge, which decision was based on his opinion respecting the credibility and trustworthiness of the witnesses he saw – are limited in their scope and character. In order to reverse, the appellate court should not merely entertain doubts at to whether the decision below is right, but must be convinced that it is wrong. (p 707 d-g)

[2] There was nothing from the notes of evidence of the trial judge to suggest that his decision was plainly wrong or was against the weight of the evidence. On the contrary, the trial judge was well justified in accepting the evidence of the complainant whom she had found to be a truthful and consistent witness who was unshaken in cross-examination. Indeed, the evidence supported the prosecution's case that the complainant submitted to the accused's will under the misconception of fact that she was being treated by a prominent spiritual healer, and that insanity or even death would befall her if she had resisted. The complainant had consented to the repeated acts of sexual intercourse under the misconception that she was being treated for her ailments. In truth, her mind was so clouded and confused and devoid of free will that it would be a travesty of justice to hold that she had freely consented to the accused's repeated sexual assaults. Similarly, the trial judge's rejection of the accused's defence was based on her assessment of the accused's credibility as a witness which she had found to be wanting as a result of lies and inconsistencies.

Consequently, there was no reason at all to interfere, and indeed the High Court ought not to have interfered, with the factual findings of the trial judge. (p 708 a-f)

[3] Under s. 375(b) of the Penal Code ('the Code') read together with s. 90(a) thereof, 'consent' is not such as is intended by the Code if the consent is given by a person under fear of injury or under a misconception or misrepresentation of fact. A complainant's state of mind immediately before the act of sexual intercourse is of central importance. The trial judge was thus correct in her factual conclusion that the complainant's state of mind was such that she could not have exercised her free will, voluntarily and consciously, when she allowed the accused to have sexual intercourse with her. Submission does not invariably mean consent. The High Court had misdirected itself in law and in fact on the issue of consent. (pp 708 g, 709 a-g, 711 c-g & 712 a)

[High Court's order of discharge and acquittal set aside; conviction and sentence recorded by Sessions Court restored.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Tertuduh telah dibicara di Mahkamah Sesyen kerana merogol seorang gadis berumur 20 tahun ('pengadu'). Adalah kes pendakwaan bahawa tertuduh telah merogol pengadu beberapa kali dalam tempoh tiga bulan atas helah untuk merawat pengadu dari penyakitnya melalui perubatan cara batin. Dalam tempoh rawatan tersebut, pengadu tinggal di rumah keluarga tertuduh, dan sesi terapi berkenaan dikatakan "didahului dengan pembacaan ayat-ayat suci Al-Qur'an, zikir atas nama Allah dan diikuti dengan perlakuan seksual". Pendakwaan berhujah bahawa pengadu telah diyakinkan bahawa itulah ketentuan Tuhan, dan bahawa, jika beliau enggan menurutinya beliau akan menjadi gila atau akan menemui ajal.

Di penutup perbicaraan, tertuduh didapati bersalah dan setelah disabit dijatuhkan hukuman lapan tahun penjara serta lapan sebatan. Sabitan bagaimanapun telah diakas oleh Mahkamah Tinggi semasa rayuan – atas alasan, pada intinya, bahawa perlakuan-perlakuan seksual tersebut dilakukan dengan kerelaan pengadu – dan tertuduh telah dilepas dan dibebaskan. Ini adalah rayuan pendakwaan ke Mahkamah Rayuan.

Diputuskan (membenarkan rayuan)
Oleh Tengku Baharudin Shah HMR menyampaikan penghakiman mahkamah:

[1] Isu sama ada pengadu rela untuk mengadakan hubungan seksual dengan tertuduh adalah satu persoalan fakta yang perlu ditentukan dengan berlandaskan keterangan yang dikemukakan di hadapan Mahkamah Sesyen. Ia adalah persoalan fakta yang secara pentingnya bersandar kepada kredibiliti saksi-saksi yang dipanggil; dengan itu, mahkamah rayuan tidak akan tergesa-gesa untuk mengganggu dapatan-dapatan fakta hakim bicara kecuali keputusannya itu dengan ketara diyakini salah atau menyanggahi tekanan keterangan. Fungsi sesebuah mahkamah rayuan – dalam rayuan terhadap keputusan hakim bicara, keputusan yang mana berasaskan kepada pendapatnya mengenai kredibiliti dan kebolehpercayaan saksi-saksi yang dilihatnya sendiri – adalah terhad dari segi skop dan sifatnya. Untuk mengakas, mahkamah rayuan tidak seharusnya hanya merasa ragu-ragu sama ada keputusan di bawah itu betul, tetapi hendaklah yakin bahawa keputusan tersebut adalah salah.

[2] Tiada sesuatupun di dalam nota keterangan hakim bicara yang menunjukkan bahawa keputusannya adalah ketara salah ataupun bercanggah dengan aliran keterangan. Sebaliknya, hakim bicara amat berjustifikasi dalam menerima keterangan pengadu yang beliau dapati seorang saksi yang boleh dipercayai dan konsisten dan yang tidak berganjak semasa diperiksa balas. Malahan, keterangan menyokong kes pendakwaan bahawa pengadu menyerah kepada kehendak tertuduh kerana salah-tanggap fakta bahawa beliau sedang dirawat oleh seorang pengamal perubatan batin yang terkenal, dan bahawa beliau akan menjadi gila atau akan mati jika beliau menolak. Pengadu rela kepada perlakuan seksual yang berulang-ulang itu di bawah salah-tanggap fakta bahawa beliau sedang dirawat berkaitan penyakitnya. Hakikatnya adalah, pemikirannya berada dalam keadaan yang celaru, keliru dan tidak bebas, sehinggakan ia menjadi ejekan kepada keadilan jika dikatakan bahawa beliau telah merelakan perlakuan seksual yang berulang kali dilakukan terhadapnya oleh tertuduh. Begitu juga, penolakan pembelaan oleh hakim bicara adalah dibuat atas dasar penilaiannya terhadap kredibiliti tertuduh sebagai seorang saksi yang beliau dapati sebagai cacat oleh pembohongan dan ketidaktetapan pendirian. Maka itu, tidak terdapat sebarang alasan untuk campur tangan, dan Mahkamah Tinggi, malah, tidak seharusnya campur tangan dalam dapatan-dapatan fakta hakim bicara.

[3] Di bawah s. 375(b) Kanun Keseksaan ('Kanun') dibaca bersama s. 90(a)nya, 'kerelaan' bukanlah apa yang dimaksudkan oleh Kanun jika ia diberikan di bawah perasaan takut dicederakan atau di bawah suatu salah-tangap atau salah nyataan fakta. Halkeadaan fikiran pengadu sejurus sebelum berlakunya perlakuan seksual adalah penting sekali. Hakim bicara dengan itu betul dalam rumusan faktanya bahawa halkeadaan fikiran pengadu menunjukkan bahawa beliau tidak berdaya untuk bertindak secara bebas, atau dengan penuh kerelaan dan sedar, apabila membenarkan tertuduh mengadakan hubungan seksual dengannya. Akur tidak semestinya menandakan kerelaan. Jelas bahawa Mahkamah Tinggi telah tersalah arah akan dirinya di sisi undang-undang dan fakta atas isu kerelaan.

Perintah pelepasan dan pembebasan Mahkamah Tinggi diketepikan; sabitan dan hukuman yang direkod oleh Mahkamah Sesyen dikekalkan.]

Case(s) referred to:
Caldeira v. Gray [1936] 1 MLJ 137 ***(foll)***
Dato' Mokhtar Hashim v. PP [1983] 2 MLJ 232 ***(refd)***
R v. Flattery [1877] QBD 410 ***(foll)***
R v. Meyers [1872] 12 Cox 311 ***(refd)***
R v. Olugboja [1982] 1 QB 320 ***(foll)***
R v. Williams [1922] 1 KB 340 ***(foll)***
Thomas Patrick Malone [1998] 2 Cr App R 447 ***(refd)***

Legislation referred to:
Penal Code, ss. 90(a), 375(b)

Penal Code [Ind], s. 375

Other source(s) referred to:
Ratanlal & Dhirajlal's Law of Crime, 25th edn, vol 2

For the prosecution - Roslan Mat Nor DPP
Appellant in person

[Appeal from High Court, Johor Bahru; Criminal Appeal No: 42-8-1999]

Reported by Gan Peng Chiang

JUDGMENT

Tengku Baharudin JCA:

The respondent in this appeal was earlier on convicted by the Sessions Court in Johor Bahru for an offence of rape. He was sentenced to imprisonment for 8 years and ordered to be given 8 strokes of the rotan. He successfully appealed to the High Court which overturned the said conviction and ordered his discharge and acquittal. We heard this appeal by the Public Prosecutor on 5 July 2004. At the end of the hearing we set aside the order of the High Court and restored the conviction and sentence imposed by the Sessions Court. We now give the reasons for our decision.

The complainant (SP6) was a 20 year old working girl staying away from her parents. She allegedly suffered from some stomach ailment which persisted despite her having sought treatment from several doctors. On her own father's (SP5) recommendation and persuasion, and being influenced by the demonstration of the respondent's extraordinary powers, she agreed to be treated by him. And feeling threatened and scared by the respondent's claim that disaster (bala) would befall on her or she would die unless she underwent his treatment, she also agreed to his condition of staying in his house for the duration of the treatment until she was cured. The purported treatment began on 24 July 1993 when SP6 was taken by the respondent to live with his wife and children at their squatter house and lasted until the middle of October 1993, except for the few days at the initial stage when she returned to work to give her notice to leave her job and then returning to her parent's house, only to be persuaded to return back to the respondent's house. The treatments from the respondent were usually preceded by recitation of Quranic verses, incantations in the name of Allah or prayers followed by sexual intercourse, *vice versa* or both. It was impressed upon SP6 that such was the will of Allah wherein she must submit, failing which she would become insane, meet an accident or die. Under such state of mind she submitted to the respondent's lust late at night and sometimes during the day. SP6 denied that she ever had any feelings towards the respondent, claiming that she received no pleasure from the sexual connections, and that at all times she believed that what was done unto her by the respondent was part of the treatment she had to undergo to relieve her suffering. She was taken in by the holy verses required to be recited, the elaborate rituals she had to undergo and the occurrences of strange happenings at times. Her faith was further strengthened by the advice of the respondent's wife that she should abide by his instructions as he had similarly treated numerous other girls when they were previously living in Pahang. She

was also told that the respondent was not any ordinary bomoh but a holy man (Wali) and that hundreds of people had sought his treatment. SP6 denied ever having sexual intercourse with anyone before that. She only realized that she had been cheated when she did not menstruate and subsequently, after confiding with her mother and consulting a doctor, found herself to be pregnant. A police report was then lodged followed by medical examination by SP2 on 1 November 1993 which confirmed that she was 21 weeks pregnant.

In his defence, the respondent denied that SP6 stayed at his house for the purpose of medical treatment, contending that he allowed her to stay with him because her house was far away, and she wanted a place near to her place of work. He claimed that they had been friends for three month and that she was fully aware of the events that transpired and consented to the sexual intercourse. She was alleged to be angry with him for breaking his promise to marry her when he could not meet her conditions. She accused him of lying and they quarreled. He was arrested a week later and charged. The respondent also denied SP6's child to be his contending that she herself admitted to having a boyfriend before him.

The Records of Appeal show that the High Court allowed the respondent's appeal solely on the ground that the learned judge after reading the notes of evidence and the grounds of decision of the learned Sessions Court Judge found that the act of sexual intercourse between SP6 and the respondent took place with SP6's consent. Before us, the learned deputy raised two issues, that is, whether in the circumstances of this case there was consent from SP6 and whether the respondent's act amounted to rape. He submitted that there was no consent given to sexual intercourse at all, and if any consent was given it was for the treatment by the respondent of her ailment. He cited to us the case of *Thomas Patrick Malone* [1998] 2 Cr. App. R 447 where the Court of Appeal in England held that there is no requirement that the absence of consent has to be demonstrated or that it has to be communicated to the defendant for the *actus reus* of rape to exist, nor does the prosecution have to prove that the complainant did say no or put up some physical resistance. The prosecution only needs to have some evidence of lack of consent which in the present case had been fully satisfied. It was also argued that SP6 only consented to the medical treatment by the respondent and that her submission to the sexual acts was in the belief they were part of that treatment and not a true consent to have sex with the respondent. In *R v. Olugboja* [1982] 1 QB 320 which was relied in support, the Court of Appeal dismissed the defendant's appeal against his conviction although the complainant had neither

screamed nor struggled and had submitted to sexual intercourse without the defendant using force or making any threat of violence. The verdict was found to be fully justified as the victim was tricked into going into the house after having been raped by another and was frightened when dragged into the bedroom with the defendant determined to have sexual intercourse with her. And she was kept there against her will until she submitted although no force was used or threatened. It was there held that the jury should be directed to the state of mind of the victim immediately before the act of sexual intercourse, having regard to all the relevant circumstances and in particular the events leading up to the act and her reaction to them showing their impact on her mind.

In the lower courts the respondent had the benefit of counsel – different counsel for the trial and the appeal stage. The respondent unfortunately could not get counsel able and willing to assist him before us though he was given sufficient opportunity to do so. We invited him to address us on the issue of fact raised and he maintained that the sexual intercourse between them occurred with mutual consent.

Whether or not SP6 consented to sexual intercourse with the respondent is a question of fact which must be decided on the evidence adduced at the trial. It is a question of fact substantially based on the credibility of witnesses. The appellate court must be and is always slow to disturb the decision of the trial judge based on credibility of witnesses unless it is convinced that the decision was plainly wrong and was against the weight of evidence. The Privy Council in *Caldeira v. Gray* [1936] 1 MLJ 137 said that the functions of the appellate court are limited in their character and scope when dealing with a question of fact and a question of fact in which questions of credibility are involved, and that in an appeal from the decision of a trial judge based on his opinion of the trustworthiness of witnesses whom he had seen, the appellate court must in order to reverse, not merely entertain doubts whether the decision below is right but be convinced that it is wrong. This principle has been adhered to by our courts all these years and was quoted in extenso by the Federal Court in *Dato' Mokhtar bin Hashim v. PP* [1983] 2 MLJ 232, 275 when it refused to interfere with the assessment of the trial judge who accepted the evidence of a witness whom he found to be consistent and unshaken by very severe cross-examination. We have no reason to question such wisdom.

Like the learned High Court Judge we also read the notes of evidence and the grounds of decision of the learned Sessions Court Judge but we found nothing in the decision of the trial court to convince us that it was wrong or against the weight of evidence. On the contrary, we found the learned trial judge justified in accepting the evidence of SP6 whom she found to be truthful, consistent and unshaken by severe cross-examination. We found ample evidence to support the prosecution's case that SP6 submitted to the respondent's will under the misconception of fact that she was being treated or undergoing medical treatment by a prominent bomoh and that death, insanity or disaster would befall on her if she disobeyed or refused. This is not a one off incident of rape but a series of sexual assaults on her covering a period of more than two months during which SP6 was made to say prayers, recite incantations and to observe and suffer elaborate procedures and strange occurrences which made her believe the respondent's claim that what was done to her was by the will and revelation of Allah. She was also convinced by the respondent's own wife that they were, and when she ran home she was persuaded and pressured by her own parents to return and complete the treatment. There was also the deception that she was unwanted by her parents and that he had to cleanse her. The trial judge was totally right in finding that SP6 gave her consent under the misconception that she was being medically treated by the respondent for her ailment. We saw no reason whatsoever for the appellate High Court to interfere with such findings of fact by the trial court. Indeed no reason was given. Likewise, the rejection of the respondent's defence is also based on the assessment of his credibility which the trial judge found wanting in view of the blatant lies and inconsistencies in his testimony in the light of established facts. To hold that SP6 truly consented to the respondent's repeated sexual assaults on her when her mind was clouded and confused and devoid of free will is clearly against the weight of evidence and would be a travesty of justice. The order made by the learned appellate judge was obviously unjustified, unsustainable and ought to be set aside.

In any event the central issue here is consent. Section 375(b) of the Penal Code (PC) stipulates that a man commits rape if he has sexual intercourse with a woman without her consent. And s. 90(a) provides that a consent is not such a consent as is intended by any section of the PC if the consent is given by a person under fear of injury, or under a misconception of fact and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception.

The authors of *Ratanlal & Dhirajlal's Law of Crime,* 25th edn. vol. 2, in commenting on the phrase "without her consent" in s. 375 of the Indian Penal Code, state the law as follows:

> Consent is an act of reason coupled with deliberation, after the mind has weighed the good and evil on each side in a balanced manner. Consent denotes an active will in the mind of a person to permit the doing of the act complained of.
>
> – See pg 1847
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> A woman is said to consent only when she freely agrees to submit herself, while in free and unconstrained possession of her physical and moral power to act in a manner she wanted. Consent implies the exercise of free and untramelled right to forbid or withhold what is being consented to, it is always a voluntary and conscious acceptance of what is proposed to be done by another and concurred by the former.
>
> – See pg 1848

It is also said that the consent of a woman should have been obtained prior to the act. It is no defence that the woman consented after the act.

Consent given on a misrepresentation of fact is one given under misconception of fact within the meaning of s. 90. In *R v. Flattery* [1877] QBD 410, the 5 men Bench unanimously upheld a conviction of rape where a 19 year old prosecutrix, on consulting the prisoner who professed to give medical and surgical advice with respect to her ill-health, was advised that a surgical operation should be performed, and under pretense of performing it, had carnal connection with her. She submitted to what was done under the belief that he was merely treating her medically and performing a surgical operation, that belief being wilfully and fraudulently induced by the prisoner. All the judges there saw nothing in the case amounting to consent, either in fact or in law, to the act of carnal connection.

As suggested by Dunn LJ in *R v. Olugboja (supra),* the emphasis should be on the state of mind of the victim immediately before the act of sexual intercourse. The Court of Criminal Appeal in *R v. Williams* [1922] 1 KB 340 dismissed the appeal against conviction where the appellant, who was engaged to give lessons in singing and voice production to a 16 year old girl, had sexual intercourse with her under the pretense that her breathing was not quite right and that he had to perform an operation to enable her to produce her voice properly. He did that to her twice. The following summary by the trial judge is said to be a correct statement of the law: "The law has laid it down

that where a girl's consent is procured by the means which the girl says this prisoner adopted, that is to say, where she is persuaded that what is being done to her is not the ordinary act of sexual intercourse but is some medical or surgical operation in order to give her relief from some disability from which she is suffering, then that is rape although the actual thing that was done was done with her consent, because she never consented to the act of sexual intercourse. She was persuaded to consent to what he did because she thought it was not sexual intercourse and because she thought it was a surgical operation."

Unlike the above cases however, we had before us a case of not one or two acts of sexual intercourse but a series of them. According to SP6 under cross-examination she was raped more than 10 times, some of which on a daily basis and others, at intervals. The first incident occurred on the first night she spent at the respondent's house. She slept in the hall while the Respondent and his family were in the bedroom. The respondent came to her naked that night. She was advised to close her eyes and did not know what happened thereafter. When she woke up the next morning she could not remember what happened – she felt like a dream. She felt some pain in her private part. She then had her bath and went to work after which she returned to her parents' house. She was a few days later persuaded to return to the respondent's house and to bring three types of leaves to continue with the treatment. That evening he bathed her with flower-scented water and asked her to pray and recite incantations till dawn. He came to her in the middle of the night claiming to have received revelation (wahyu) from Allah and that she was to obey him. He brain-washed her to such an extent that she began to see strange things happening and persuaded her to take off her panties and lie down. After some elaborate ritual he stuck a bundled of pandan leaves into her vagina leaving them there till morning. The next day he asked her to recite incantations and to pray. The following night SP6 after asking the respondent's wife about the unusual treatment was told that other women were similarly treated by the respondent in her room adding that her husband was not only a bomoh but a holy man (Wali) and that SP6 should best abide by his instructions. SP6 had her period for the next few days but thereafter the respondent resumed his treatment. Having been persuaded and being convinced that it was the will of Allah to which she must submit, SP6 allowed the respondent to penetrate her and ejaculate into her after which she was asked to take her ablution and to pray and recite incantations. On the next day, after his wife had gone to work

in the morning, the respondent told SP6 that he had received revelation from Allah to start treatment during daytime. After asking his children to go out, he repeated what he did to her the previous night. Only this time he ejaculated into her mouth and asked her to swallow his semen claiming that it was holy water from heaven. From then on the respondent had sexual intercourse with SP6 whenever he wanted day or night. The relationship went on until October 1999 when SP6 told the respondent's wife that he made her drink his semen. As a result the respondent quarreled with his wife and also threatened to kill SP6. The next day she ran away and refused further treatment.

On such facts sufficiently corroborated, and considering the line of defence of non denial of the alleged occurrences but for the consent, can one really believe that SP6 freely consented to the acts of sexual intercourse by the respondent on her? Like the judges in *R v. Flattery*, we also saw nothing in the circumstances of this case amounting to SP6's consent in fact or in law to the acts of carnal connection by the respondent. It had been drummed into her mind that she was submitting to the will of Allah through this super being who by such treatment could alleviate her from her suffering and prevent misfortune and disaster. He knew she would not and did not submit to his sexual advances so that he resorted to all manner of persuasion, threat, deceit and false rituals to convince her to submit. On the facts of this case as found by the trial judge, SP6 was not in a state of mind to exercise her will voluntarily and consciously when she allowed the respondent to take liberties on her person. Her acts of obedience and submission to the respondent do not denote an active will in her mind to permit the respondent's acts of sexual intercourse on her. He had fraudulently induced her to believe that she was receiving his style of treatment, and he very well knew that she was labouring under such belief.

SP6 did not appear to be conscious of what was being done to her when she was ravished the first time (see *R v. Meyers* [1872] 12 Cox 311). She did not appreciate nor could she anticipate the respondent's actions in at least the few subsequent incidents as such she could not be said to have consciously permitted the sexual assaults on her before they happened. And she was living under the misconception of fact that she was receiving medical treatment from the respondent as bomoh throughout a large part if not the whole period of her stay with him. While consent must necessarily imply submission it does not follow that submission must mean consent because submission can also

result from fear, force, threat, inducement or deception. SP6's submission to the respondent's bomoh treatment in this case was undoubtedly caused by his inducement and deception. Therefore we agreed with the learned deputy that the appellate High Court Judge had misdirected himself in law and in fact on the issue of consent of SP6.

In all the circumstances therefore we allowed the appeal, set aside the order of discharge and acquittal by the High Court and restored the conviction and sentence imposed by the Sessions Court.